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FCC/MELO:

FEB 20 2004

DUPLICATE

February 20, 2004

Federal Communications Commission  
Wireline Competition Bureau – CPD – 214 Appls  
P O Box 358145  
Pittsburgh, PA 15251-5145

Re: In the Matter of Allegiance Telecom, Inc., Debtor-in-Possession, Transferor, And  
XO Communications, Inc., Transferee, Application for Consent to a Transfer of  
Control under Section 214 of the Communications Act of 1934, as Amended

Enclosed for filing, on behalf of Allegiance Telecom, Inc., Debtor-in-Possession ("ATI") and XO Communications Inc ("XO" and, together with ATI, the "Parties"), please find an original and five copies of the above-captioned application. The Parties request authority for the transfer of control to XO of ATI's subsidiaries that hold blanket authority under Section 214 of the Act to provide domestic interstate telecommunications services. (Authority to transfer control of those ATI subsidiaries holding international Section 214 licenses has been requested separately today via electronic filing with electronic fee payment.)

Remittance Form 159 and a check to cover the \$860 filing fee for this application are appended. An additional copy of this filing for date-stamp and return to the delivering courier has been provided as well. If there are any questions regarding this application, please contact Joan M. Griffin at (703) 918-2320. Thank you in advance for your assistance with this matter.

Sincerely,

*W Brantl (grv)*  
Winifred Brantl

enclosures

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Sincerely,

*W Brantl (jmb)*

Winafred Brantl

enclosures

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0189  
Page 1 of 1

(1) LOCK BOX # 358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Kelley Drye &amp; Warren LLP</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$860.00</b>	
(4) STREET ADDRESS LINE NO 1 <b>8000 Towers Crescent Drive</b>			
(5) STREET ADDRESS LINE NO 2 <b>Suite 1200</b>			
(6) CITY <b>Vienna</b>		(7) STATE <b>VA</b>	(8) ZIP CODE <b>22182</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>703-918-2320</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0006554778</b>		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME <b>Allegiance Telecom. Inc., Debtor-in-Possession</b>			
(14) STREET ADDRESS LINE NO 1 <b>9201 North Central Expressway</b>			
(15) STREET ADDRESS LINE NO 2			
(16) CITY <b>Dallas</b>		(17) STATE <b>TX</b>	(18) ZIP CODE <b>75231</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>214-261-7100</b>		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) <b>0010114544</b>		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$860.00</b>	(27A) TOTAL FEE <b>\$860.00</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>WINIFRED BARNETT</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>Winifred Barnett</u>		DATE <u>2/19/04</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Allegiance Telecom, Inc , Debtor-in-Possession,	)	
Transferor,	)	
	)	
and	)	File No. ITC-T/C-2004_____
	)	
XO Communications, Inc.,	)	WC Docket No. 04-_____
Transferee,	)	
	)	
Joint Application for Consent to a Transfer	)	
of Control under Section 214 of the	)	
Communications Act of 1934, as Amended	)	

**JOINT APPLICATION FOR CONSENT  
TO TRANSFER OF CONTROL**

By this Joint Application and pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Sections 63.03, 63.04 and 63.24(a) of the Commission's Rules, 47 C.F.R. §§ 63.03, 63.04 and 63.24(a), Allegiance Telecom, Inc., Debtor-in-Possession and XO Communications, Inc.<sup>1</sup> seek the consent of the Federal Communications Commission (the "FCC" or "Commission") to the proposed transfer of control to XO of ATI's subsidiaries that hold authority under Section 214 of the Act to provide domestic interstate and international telecommunications services.<sup>2</sup> This Joint

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<sup>1</sup> This Application pertains to Allegiance Telecom, Inc , Debtor-in-Possession ("ATI") and its operating subsidiaries listed in Exhibit A (collectively referred to as "Allegiance"), and to XO Communications, Inc ("XO") Allegiance and XO are referred to collectively as the "Applicants " A schedule of the FCC authorizations held by Allegiance is provided in Exhibit A Please note that the control of XO and its subsidiaries is not affected by the proposed transfer of control described herein XO and its subsidiaries will continue to operate pursuant to their same names, operating authorities, web-based rates, terms and conditions, and state tariffs (where applicable) as at present

<sup>2</sup> This Joint Application is subject to the permit-but-disclose provisions of the Commission's *ex parte* rules, 47 C.F.R. 1.1206(a)(5), because no Title III licenses are involved in this transaction

Application is in furtherance of the reorganization of ATI under chapter 11 of the U.S. Bankruptcy Code ("Bankruptcy Code")<sup>3</sup>

Pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined application for the proposed transfer of control of ATI's subsidiaries that hold domestic and international Section 214 authorizations to XO. In connection with the transfer of control of the ATI subsidiaries that hold international Section 214 authorizations, Applicants provide below the information required by Section 63.24(e)(2) of the Commission's Rules, 47 C.F.R. § 63.24(e)(2). Exhibit C provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission's Rules, 47 C.F.R. § 63.04(a)(6)-(12), in connection with the transfer of control of the ATI subsidiaries that hold domestic Section 214 authority.

The Applicants respectfully request streamlined treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 and 63.12. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i), because (a) even after the proposed transaction, XO will have market share in the interstate, interexchange market of substantially less than 10 percent, and (b) XO is not currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction. This Application also qualifies for streamlined treatment under Section 63.12 because (a) XO is not affiliated

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<sup>3</sup> On December 31, 2003, Allegiance filed a Joint Application for Consent to Assignment of Assets with Qwest Communications International Inc. ("Qwest"). See WC Docket No. 04-13 and FCC File No. ITC-ASG-20040112-00012. In that application, Allegiance sought Commission approval of the transfer of substantially all of the assets of Allegiance to Qwest. As a result of the auction for the sale of Allegiance's assets, which was conducted on February 12 through 13, 2004, pursuant to the Bid Procedures Order approved by the Bankruptcy Court on January 15, 2004, XO was designated the high bidder. Accordingly, this Application supersedes the prior application with Qwest.

with a dominant foreign carrier, (b) XO will not become affiliated with any foreign carrier as a result of the proposed transaction discussed in this Joint Application, and (c) none of the other provisions contained in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

Finally, the Applicants request that the Commission process this Application on an expedited basis. Compelling business considerations require the expeditious completion of the transaction. Specifically, the ongoing bankruptcy cases of Allegiance and its financial condition require Applicants to consummate the transaction as soon as possible to ensure that Allegiance's customers receive uninterrupted service. Consummation of the transfer of control of the ATI subsidiaries to XO will eliminate the continuing uncertainty caused by Allegiance's bankruptcy and enable the combined company to compete vigorously to expand its customer base. Further, since Allegiance has been precluded while it has been in bankruptcy from devoting the resources necessary to introduce new products and services or to expand its business, an expedited closing will allow Allegiance's current customers to realize sooner the benefits of the proposed transaction, including additional products and services, as well as expanded coverage. Therefore, affording this Application expedited treatment will serve the public interest.

## **I. APPLICANTS**

### **A. Allegiance**

ATI is a corporation organized under the laws of the State of Delaware with its principal office located at 9201 North Central Expressway, Dallas, Texas 75231. ATI's common stock is traded on the Over the Counter Bulletin Board under the symbol

“ALGXQ.OB.” Through the companies listed in Exhibit A, Allegiance provides facilities-based integrated telecommunications products and services to small and medium-sized business customers, large business enterprises (*e g* , national customers with multiple locations), governmental entities, and other institutional users in 36 metropolitan areas in 24 states and the District of Columbia<sup>4</sup> Allegiance provides services primarily through the use of its own switches and routing equipment, leased transport facilities, fiber optic networks, and local loops obtained from ILECs.

Allegiance offers its customers a variety of services, including among other services:

- local, long distance and international voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and collocation services;
- integrated local/long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line, and
- equipment collocation, managed modem ports and Internet protocol traffic aggregation

As of September 30, 2003, Allegiance served more than 100,000 business customers and employed approximately 2,912 people.

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<sup>4</sup> Those metropolitan areas are Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Fort Lauderdale, Fort Worth, Houston, Long Island, Los Angeles, Miami, Minneapolis/St Paul, Northern New Jersey, Oakland, Ontario/Riverside CA, Orange County, Philadelphia, Phoenix, Pittsburgh, Portland, Sacramento, St Louis, San Antonio, San Diego, San Francisco, San Jose, Seattle, Tampa, Washington D C , West Palm Beach/Boca Raton, and White Plains, NY

On May 14, 2003, ATI and each of its subsidiaries commenced cases under chapter 11 of the Bankruptcy Code.<sup>5</sup> No trustee or examiner has been appointed in the chapter 11 cases, and Allegiance is authorized to operate its businesses and manage its properties as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As debtor-in-possession, Allegiance has retained possession of its property and businesses during the reorganization process, and there have been no significant changes in its management.<sup>6</sup>

## **B. XO**

XO Communications, Inc. is a Delaware corporation whose principal office and place of business is located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339. The company's stock is publicly traded on the Over the Counter Bulletin Board under the symbol "XOCM.OB." XO is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies. XO is a leading facilities-based provider of broadband telecommunications services. The company offers a complete set

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<sup>5</sup> *In re Allegiance Telecom, Inc., et al.*, Chap. 11 Case Nos. 03-13057-rdd, *et seq.* (Bankr. S.D.N.Y., filed May 14, 2003). The bankruptcy cases of ATI and its subsidiaries have been consolidated for procedural purposes and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

<sup>6</sup> On May 20, 2003, Allegiance Telecom International, Inc. notified the FCC of the *pro forma* assignment of its international Section 214 authorization to Allegiance Telecom International, Inc., Debtor-in-Possession, and of the *pro forma* transfer of control of that authorization from Allegiance Telecom, Inc. to Allegiance Telecom, Inc., Debtor-in-Possession. The Commission approved the assignment and transfer of control on October 1, 2003. See *Public Notice*, FCC File No. ITC-ASG-2003520-00346, International Authorizations Granted, DA No. 03-3021 (rel. Oct. 2, 2003). In preparing its application for the proposed transaction with Qwest, ATI became aware that it did not notify the Commission that its subsidiary, Coast to Coast Telecommunications Inc. ("Coast to Coast"), which also holds an international Section 214 authorization (see File No. ITC-95-309), is a debtor in the chapter 11 cases. Accordingly, Allegiance requested in that application that the Commission approve on a *nunc pro tunc* basis the *pro forma* assignment of Coast to Coast's international Section 214 authority to Coast to Coast Telecommunications Inc., Debtor-in-Possession. That request was not granted prior to the termination of the Qwest transaction and the withdrawal of the associated Commission application. Accordingly, ATI renews its request for the approval of the *pro forma* assignment of the Section 214 authorization held by Coast to Coast to Coast to Coast Telecommunications, Inc., Debtor-in-Possession on a *nunc pro tunc* basis.



of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. The company also is one of the nation's largest holders of fixed wireless spectrum, covering 95 percent of the population of the 30 largest U.S. cities. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States.

XO is authorized, through its subsidiaries, to provide intrastate interexchange services virtually nationwide, and is authorized to provide local exchange services in 48 states.<sup>7</sup>

## **II. DESCRIPTION OF THE TRANSACTION**

On February 18, 2004, following the completion of a court-supervised auction, ATI and XO executed the Purchase Agreement, dated February 18, 2004, by and among Allegiance Telecom, Inc., Allegiance Telecom Company Worldwide, and XO Communications, Inc. (the "Agreement"), whereby XO agreed to acquire certain indirect operating subsidiaries of ATI, including substantially all of these companies' assets, as well as certain of the assets of ATI and its other subsidiaries as more particularly

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<sup>7</sup> Major metropolitan areas served by XO include Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Columbus, Dallas, Denver, Detroit, Houston, Las Vegas, Los Angeles, Memphis, Miami, Minneapolis, Nashville, New York, Orlando, Philadelphia, Phoenix, Portland, Sacramento, Salt Lake City, San Antonio, San Diego, San Francisco, Seattle, Spokane, St. Louis, Tampa, and Washington, DC.

described below (the "Transaction").<sup>8</sup> On February 19, 2004, the Bankruptcy Court confirmed XO as the winner of the auction, approved the Agreement, and issued a bench ruling to that effect.<sup>9</sup> The Agreement has been approved by the respective boards of directors of XO and Allegiance

Pursuant to the Agreement, XO will acquire the stock of ATI's regulated operating subsidiaries and all of the assets of these companies, and substantially all of the assets of ATI and its other subsidiaries, with the exception of Allegiance's customer premise equipment sales and maintenance business, its dedicated managed modem business, and certain other assets and operations. In return, XO will deliver to ATI approximately \$311 million in cash and approximately 45.38 million shares of XO common stock. The closing of the Transaction is contingent on receipt of FCC and DOJ approvals, among other things. After closing, companies controlled by Carl C. Ichan will hold 54 percent of the ownership and voting interests in XO, and thus ultimate control of XO will remain with Carl C. Ichan.

### **III. PUBLIC INTEREST STATEMENT**

The acquisition of the ATI subsidiaries and selected assets by XO pursuant to the Agreement will serve the public interest. *First*, the combination of Allegiance and XO will create the premier competitive local exchange carrier ("CLEC") in the U.S., which will greatly enhance competition in the local services market to the ultimate benefit of

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<sup>8</sup> A copy of the Agreement is attached as Exhibit B. The agreement between ATI and XO supersedes a previous agreement between ATI and Qwest whereby Qwest would have acquired substantially all of the assets of ATI's operating companies.

<sup>9</sup> A copy of the sale order will be provided as soon as it is available.

U.S. business consumers. Allegiance was founded in 1997, and, as of September 30, 2003, provides service to over 100,000 customers in 36 major metropolitan areas throughout the United States. Despite its successes, however, Allegiance ultimately was unable to avoid the structural and financial problems affecting the competitive telecommunications market. Allegiance's current financial position effectively precludes Allegiance from devoting the resources necessary to introduce new products and services or to expand its business throughout the United States.

With the acquisition of substantially all of Allegiance's operating subsidiaries and customer base, XO will become the nation's largest competitive provider of national local telecommunications and broadband services with more than 180,000 customers and estimated annual revenue of approximately \$1.6 billion. The combined company will have the largest network of nationwide collocations to regional Bell operating companies' networks of any other CLEC, and double the points of presence ("POPs") in the markets where both XO and Allegiance operate. This extensive network is expected to enable the combined company to provide superior service delivery to its customers, reduce network costs, reduce dependency on the ILECs, and improve operating results. In addition to increasing its ability to serve end-user customers, with the increase in the density of POPs in local markets, the combined company will be uniquely positioned to sell last mile and metro services to other long distance companies, thus enhancing competition in this market as well. As a result of these enhancements, the combined company will be better able to compete directly with the regional Bell operating companies and other companies in the nationwide local telecommunications services market. Business customers will have more choices available to them to satisfy their needs for end-to-end

telecommunications services. Indeed, with the combination of XO and Allegiance, the combined company will be the largest national CLEC outside of the traditional interexchange carriers with the scale and scope to be able to compete effectively head-to-head with the ILECs as contemplated by the Telecommunications Act of 1996.

*Second*, the combination of XO and Allegiance will improve service to Allegiance's existing customers and will not result in any cessation or degradation of service for the existing customers of Allegiance. Indeed, the Transaction will be virtually transparent to customers of Allegiance. In particular, because it is a stock transaction, the transfer of control of ATI's operating subsidiaries will not result in a change of carrier for Allegiance's customers. Immediately following consummation of the Transaction, the combined company will continue to provide service at the same rates, terms, and conditions as are currently provided; such rates, terms and conditions may be changed in the future in accordance with the customer's service agreement and applicable law. In fact, the operations of Allegiance folded into the combined company will largely continue to be supervised by many of the same management, technical, and customer service personnel that currently oversee those operations.

*Finally*, the combination of XO and Allegiance enhances competition and does not result in any anticompetitive effects. The combined company will achieve economies of scale and scope which will enhance the company's ability to roll out new products and services and expand into new markets. Although XO and Allegiance both provide

service in certain markets,<sup>10</sup> neither has significant market share in any of these markets, and the combined market share of the combined company post-closing will not exceed 10 percent in any market. In all instances, the incumbent local exchange carrier has a virtual monopoly and this transaction will not diminish the ILEC's dominant market position. Furthermore, other CLECs such as Focal, TimeWarner Telecom, ICG, Cbeyond, Broadview, KMC, Xspedius, and NuVox are active participants in many of these markets. Accordingly, the combination of Allegiance and XO will increase, not degrade, the competitiveness of these markets.

#### **IV. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE COMMISSION'S RULES**

In support of this Application, the Applicants submit the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

(a) Name, address and telephone number of Applicants:

Allegiance Telecom, Inc  
9201 North Central Expressway  
Dallas, Texas 75231  
Tel. (214) 261-7100  
Fax (469) 259-9122

XO Communications Inc  
11111 Sunset Hills Road  
Reston, VA 20190-5339  
Tel. (703) 547-2000  
Fax. (703) 547-2025

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<sup>10</sup> Those markets are Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis, New York, Philadelphia, Phoenix, Portland, Orange County, Sacramento, San Antonio, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington, DC

- (b) ATI and XO are corporations organized under the laws of Delaware. ATI's FCC-licensed subsidiaries are formed in the jurisdictions indicated in Exhibit A.
- (c) Correspondence concerning this Application should be sent to:

<b>For XO:</b>	<b>For Allegiance:</b>
<p>Christopher McKee Director of Legal and Regulatory Affairs XO Communications, Inc 11111 Sunset Hills Road Reston, VA 20190-5339 Tel (703) 547-2000 Fax (703) 547-2358 <a href="mailto:Chris.mckee@xo.com">Chris.mckee@xo.com</a></p> <p>Lee Weiner Senior Vice President and General Counsel XO Communications, Inc. 11111 Sunset Hills Road Reston, VA 20190-5339 Tel: (703) 547-2000 Fax: (703) 547-2025 <a href="mailto:Lee.weiner@xo.com">Lee.weiner@xo.com</a></p>	<p>Kevin M. Joseph Senior Vice President; Government and External Affairs Allegiance Telecom, Inc. 1919 M Street, N.W., Suite 420 Washington, D.C. 20036 Phone: (202) 464-1789 Fax: (202) 464-1780 <a href="mailto:Kevin.Joseph@algx.com">Kevin.Joseph@algx.com</a></p> <p>Mark A. Stachiw Senior Vice President and General Counsel - Allegiance Telecom Company Worldwide Allegiance Telecom, Inc. 9201 North Central Expressway Dallas, Texas 75231 Phone: (469) 259-2099 Fax: (469) 259-9122 <a href="mailto:Mark.Stachiw@algx.com">Mark.Stachiw@algx.com</a></p>
<p>Brad E. Mutschelknaus Kelley Drye &amp; Warren LLP 1200-19<sup>th</sup> Street, N.W. Suite 500 Washington, DC 20036 Tel: (202) 955-9600 Fax (202) 955-9792 <a href="mailto:mutsb@kelleydrye.com">mutsb@kelleydrye.com</a></p> <p>Joan M. Griffin Kelley Drye &amp; Warren LLP 8000 Towers Crescent Drive Suite 1200 Vienna, VA 22182 Tel: (703) 918-2300 Fax (703) 918-2450 <a href="mailto:jgriffin@kelleydrye.com">jgriffin@kelleydrye.com</a></p>	<p>Jean L. Kiddoo Paul O. Gagnier Troy F. Tanner Swidler Berlin Shereff Friedman, LLP 3000 K Street, NW, Suite 300 Washington, DC 20007-5116 Tel: (202) 424-7500 Fax: (202) 295-8478 <a href="mailto:JL.Kiddoo@swidlaw.com">JL.Kiddoo@swidlaw.com</a> <a href="mailto:POGagner@swidlaw.com">POGagner@swidlaw.com</a> <a href="mailto:TFTanner@swidlaw.com">TFTanner@swidlaw.com</a></p>

- (d) Subsidiaries of ATI hold the international Section 214 authorizations listed in Exhibit A. XO holds global facilities-based and global resale Section 214 authority that was granted by the Commission on December 15, 2000 in File No. ITC-214-20001117-00674. As XO previously advised the Commission by letter dated January 14, 2002, XO provides service under this authorization through a number of wholly-owned subsidiaries pursuant to Section 63.21(i) of the Commission's Rules. Another XO subsidiary, XO Long Distance Services, Inc., received a global resale Section 214 authorization on June 4, 1999 in File No. ITC-214-19990402-00197.
- (h) Upon consummation of the proposed transaction, the subsidiaries of ATI that are listed in Exhibit A will become wholly-owned subsidiaries of XO. Cardiff, a Delaware limited liability company, will hold 54 percent of the equity and voting interests in XO after closing. Cardiff is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of its general and limited partners. The general partner of Cardiff is Barberry Corp. ("Barberry"), a Delaware corporation. Carl C. Icahn owns 100 percent of Barberry's stock. Barberry holds an approximately 1 percent partnership interest in Cardiff. Cardiff has two limited partners. One limited partner is Chelonian Corp. ("Chelonian"), a New York corporation. Carl C. Icahn controls either directly or indirectly approximately 99 percent of Chelonian's stock. Chelonian holds an approximately 91 percent partnership interest in Cardiff. The other limited partner in Cardiff is Highcrest Investors Corp. ("Highcrest"), a Delaware corporation. Carl C. Icahn controls either directly or indirectly approximately 99.5 percent of Highcrest's stock. Highcrest holds an approximately 8 percent partnership interest in Cardiff.

Cardiff, Barberry, Chelonian, Highcrest, and Mr. Icahn are all engaged in the business of buying, selling, investing, and holding securities and debt obligations. The address of Cardiff, Barberry, Chelonian, Highcrest, and Carl C. Icahn is 767 Fifth Avenue, 47<sup>th</sup> Floor, New York, New York 10153.

In addition, Amalgamated Gadget, L.P. ("Amalgamated") will hold 11 percent of the equity and voting interests in XO post-closing. Amalgamated, a U.S. limited partnership, is controlled by its general partner, Scepter Holdings ("Scepter"), a corporation formed under the laws of the state of Texas. The sole shareholder of Scepter is Geoffrey Raynor, a U.S. citizen. Amalgamated acquired its ownership interest in XO for and on behalf of R2 Investments, LDC ("R2"). R2 is a limited duration company organized under the laws of the Cayman Islands. None of the owners of R2 hold 50 percent or more of the equity in R2. Amalgamated has sole voting and dispositive power over its XO shares and R2 has no beneficial ownership of the shares.

Amalgamated, Scepter, Mr. Raynor, and R2 are all engaged in the business of buying, selling, investing, and holding securities and debt obligations. The address of Amalgamated, Scepter, and Mr. Raynor is 301 Commerce Street, Suite 2975, Fort

Worth, Texas 76102 The address of R2 is c/o Walkers SPV Limited, Mary Street, PO Box 908 GT, George Town, Grand Cayman, Cayman Islands.

XO states that following consummation of the Transaction, there will be no interlocking directorates with any foreign carrier.

- (i) As evidenced by the signatures to this Application, XO certifies that following consummation of the Transaction, XO will not be a foreign carrier and will not be affiliated with any foreign carriers.
- (j) As evidenced by the signatures to this Application, XO certifies that through its acquisition of Allegiance it does not seek to provide international telecommunications services to any destination country where (i) XO is a foreign carrier; (ii) XO controls a foreign carrier, (iii) any entity that owns more than 25 percent of XO, or that controls XO, controls a foreign carrier in that country; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of XO and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.
- (k) Not applicable.
- (l) Not applicable.
- (m) XO qualifies for a presumption of non-dominance under Section 63.10(a)(1) as it is not a foreign carrier, nor is it affiliated with a foreign carrier
- (n) As evidenced by the signatures to this Application, XO certifies that it has not agreed to accept special concessions, as defined in Section 63.14(b) of the Commission's Rules, 47 C.F.R. §63.14(b), directly or indirectly, from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and will not enter into such agreements in the future
- (o) As evidenced by the signatures to this Application, Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301), that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988
- (p) Applicants request streamlined processing of this Application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This Application qualifies for streamlined processing under Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12(c), because (i) XO is not affiliated with a dominant foreign carrier, (ii) XO will not become affiliated with any foreign carrier as a result of the proposed transaction discussed in this Joint Application, and (iii)



none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply

**V. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE COMMISSION'S RULES**

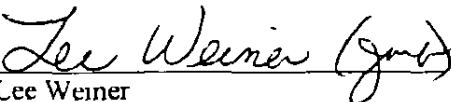
In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required by this section for the domestic Section 214 transfer of control application is provided in Exhibit C

## VI. CONCLUSION

Based on the foregoing, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by an expedited grant of this Application.

Respectfully submitted,

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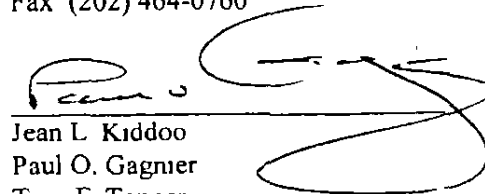
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Dated February 19, 2004

### **LIST OF EXHIBITS**

EXHIBIT A	FCC-Certificated Subsidiaries of Allegiance
EXHIBIT B	Purchase Agreement
EXHIBIT C	Domestic Section 214 Transfer of Control Information

**EXHIBIT A**

**FCC-CERTIFICATED SUBSIDIARIES OF ALLEGIANCE**

**Allegiance International Section 214 Authority**

<b>Name</b>	<b>FRN</b>	<b>Place of Incorporation</b>	<b>Place of Operation</b>
Allegiance Telecom International, Inc , Debtor-in-Possession  File Nos. ITC-214-19971112-00696, ITC-ASG-20030520-00346	0009639683	Delaware	USA
Coast to Coast Telecommunications, Inc., Debtor-in-Possession  File Nos. ITC-95-309; ITC-T/C-20010926-00510	0010113546	Delaware	Michigan

**Allegiance Domestic Section 214 Authority**

<b>Name</b>	<b>FRN</b>	<b>Place of Incorporation</b>	<b>Place of Operation</b>
Allegiance Telecom of Arizona, Inc , Debtor-in-Possession	0010113108	Delaware	Arizona
Allegiance Telecom of California, Inc., Debtor-in-Possession	0010113140	Delaware	California
Allegiance Telecom of Colorado, Inc , Debtor-in-Possession	0010113207	Delaware	Colorado
Allegiance Telecom of The District of Columbia, Inc., Debtor-in-Possession	0010113264	Delaware	District of Columbia
Allegiance Telecom of Florida, Inc., Debtor-in-Possession	0010113298	Delaware	Florida
Allegiance Telecom of Georgia, Inc , Debtor-in-Possession	0010114783	Delaware	Georgia
Allegiance Telecom of Illinois, Inc., Debtor-in-Possession	0010113363	Delaware	Illinois
Allegiance Telecom of Indiana, Inc., Debtor-in-Possession	0010113462	Delaware	Indiana
Allegiance Telecom of Maryland, Inc., Debtor-in-Possession	0010113538	Delaware	Maryland
Allegiance Telecom of Massachusetts, Inc., Debtor-in-Possession	0010113637	Delaware	Massachusetts
Allegiance Telecom of Michigan, Inc , Debtor-in-Possession	0010113660	Delaware	Michigan

<b>Name</b>	<b>FRN</b>	<b>Place of Incorporation</b>	<b>Place of Operation</b>
Allegiance Telecom of Minnesota, Inc., Debtor-in-Possession	0010113736	Delaware	Minnesota
Allegiance Telecom of Missouri, Inc., Debtor-in-Possession	0010113744	Delaware	Missouri
Allegiance Telecom of New Jersey, Inc., Debtor-in-Possession	0010113801	Delaware	New Jersey
Allegiance Telecom of New York, Inc., Debtor-in-Possession	0010113835	Delaware	New York
Allegiance Telecom of North Carolina, Inc., Debtor-in-Possession	0010113991	Delaware	North Carolina
Allegiance Telecom of Ohio, Inc , Debtor- in-Possession	0010114049	Delaware	Ohio
Allegiance Telecom of Pennsylvania, Inc., Debtor-in-Possession	0010114106	Delaware	Pennsylvania
Allegiance Telecom of Texas, Inc , Debtor-in-Possession	0010114130	Delaware	Texas
Allegiance Telecom of Virginia, Inc , Debtor-in-Possession	0010114163	Virginia	Virginia
Allegiance Telecom of Washington, Inc., Debtor-in-Possession	0010114221	Delaware	Washington
Allegiance Telecom of Nevada, Inc., Debtor-in-Possession	0010114288	Delaware	Nevada
Allegiance Telecom of Oklahoma, Inc , Debtor-in-Possession	0010114361	Delaware	Oklahoma
Allegiance Telecom of Oregon, Inc., Debtor-in-Possession	0010114411	Delaware	Oregon
Allegiance Telecom of Wisconsin, Inc., Debtor-in-Possession	0010114452	Delaware	Wisconsin
Coast to Coast Telecommunications, Inc., Debtor-in-Possession	0010113546	Delaware	Michigan

## **EXHIBIT C**

### **DOMESTIC SECTION 214 TRANSFER OF CONTROL INFORMATION**

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04, the Applicants provide the following information in support of their request.

#### **63.04(b)(6): Description of the Transaction**

The proposed transaction is described in Section II of the Application.

#### **63.04(b)(7): Description of Geographic Service Area and Services in Each Area**

A description of the geographic service areas and services provided in each area is described in Section I of the Application.

#### **63.04(b)(8): Presumption of Non-Dominance and Qualification for Streamlining**

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i). Following the consummation of the proposed transaction, XO will have market share in the interstate, interexchange market of substantially less than 10 percent, and XO will not be dominant with respect to any domestic service.

#### **63.04(b)(9): Other Pending Commission Applications Concerning the Proposed Transaction**

None.

#### **63.04(b)(10): Special Consideration**

As described in this Application, the transaction is intended to facilitate the restructuring under chapter 11 of the Bankruptcy Code. Thus, it is critical to a successful

and orderly restructuring that the Applicants be permitted to consummate the transaction as soon as possible.

**63.04(b)(11): Waiver Requests (If Any)**

None.

**63.04(b)(12): Public Interest Statement**

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The proposed transaction is in the public interest for the reasons detailed in Section III of the Application